(19,495.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1904.

## No. 395.

C. E. HOWARD, APPELLANT,

*vs.*

E. B. PERRIN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a In the Supreme Court of the Territory of Arizona.

C. E. HOWARD, Appellant,
*vs.*
E. B. PERRIN, Appellee.
} No. 802. Transcript of Appeal.

Filed this 29th day of September 1902, at 10.30 o'clock a. m.

JAMES ALLEN COX, *Clerk*,
By ANGIE B. PARKER,
*Deputy Clerk.*

1 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

E. B. PERRIN, Plaintiff,
*vs.*
C. E. HOWARD, Defendant.
} Complaint.

Said plaintiff complains of said defendant and alleges:

I.

That both plaintiff and defendant are residents of said county and Territory.

II.

That plaintiff is now, and for a long time prior hereto, has been the owner and entitled to the exclusive possession of the following described land and real property situate in said county and Territory, to wit:

The northwest one-fourth (¼) of section fifteen (15) township twenty-five (25) north of range three (3) west, of the Gila and Salt River base and meridian.

III.

That after plaintiff was so entitled to the exclusive possession of said land and before the institution of this suit and on or about the — day of July, 1896, the said defendant without the consent and against the will and wishes of said plaintiff, unlawfully entered into the possession of said premises and dispossessed the plaintiff
2 thereof and now unlawfully withholds and has since said date unlawfully withheld from plaintiff the possession thereof to plaintiff's damage in the sum of $2000.

That the rents, issues and profits arising from the use and occupation of said land and its possession by said defendant and to which the plaintiff is entitled is at the rate of $5000 per year, aggre-

gating the sum of $10,000 for two years, which said sum said plaintiff has been by said defendant damaged and which said sum for said rents, profits and issues of said land during the time that said defendant has unlawfully withheld the same from the possession of said plaintiff, is now due to plaintiff from said defendant.

Wherefore the premises considered, the plaintiff prays the judgment of the court:

I.

That plaintiff be declared to be the owner of and entitled to the exclusive possession of said land.

II.

That plaintiff have and recover from said defendant as damages from the unlawful taking and detention of said land said sum of $2000.

III.

That plaintiff do have and recover from said defendant as the rents, issues and profits of said land at the rate of $5000 per year and

3 For costs of suit.

W. W. JOHNSTON,
*Att'y for Plaintiff.*

TERRITORY OF ARIZONA, } ss:
*County of Coconino,* }

E. B. Perrin, being first duly sworn deposes and says: That he is the plaintiff in the above entitled case and has read the foregoing complaint and knows it to be true, except as to the matters and things therein stated on information and belief and as to them he believes them to be true.

E. B. PERRIN.

Subscribed and sworn to before me this 13th day of July, A. D. 1898.

JOS. JOHNSTON,
[SEAL.] *Notary Public.*

My commission expires May 28th, 1902.

Filed: July 13th, 1898, at 11:35 a. m.

C. M. FUNSTON, *Clerk.*

4 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

E. B. PERRIN, Plaintiff,
vs.
C. E. HOWARD, Defendant.
} Amended Answer.

*Demurrer.*

Comes now the defendant and answering the complaint of plaintiff by way of demurrer, demurs thereto and alleges:

That said complaint does not state facts sufficient to constitute a cause for action.

Wherefore defendant prays judgment of the court as to the sufficiency of said complaint and for costs.

*Answer.*

First defense.

Furthering answering complaint of plaintiff, by way of answer, the defendant pleads "not guilty."

Second defense.

I.

Furthering answering complaint of plaintiff, defendant admits that both defendant and plaintiff are residents of Coconino county, Arizona Territory; and denies each, every and all of the other allegations in said complaint contained.

5 Third defense.

I.

That the defendant now holds and has held and occupied by right of possession only for more than two years immediately prior to the commencement of this action, the land and premises in plaintiff's said complaint.

II.

Defendant further alleges that he now occupies and is in possession of and claims, the real property described in plaintiff's said complaint by right of possession, only and that he has had open, peaceable, adverse and continuous possession of said premises, by right of possession only, for a period of more than two years immediately prior to the bringing of this action; and for more than two years after plaintiff's right of action accrued, and that the same is fully barred by the statute of limitation.